

APPEAL NO. 040705
FILED MAY 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 23, 2004. The hearing officer determined that the Independent Review Organization's (IRO) decision and order against spinal surgery was not supported by a preponderance of the evidence. The appellant (carrier) appealed, arguing that the hearing officer's determination that the IRO's decision recommending against spinal surgery was not supported by a preponderance of the evidence is incorrect. The appeal file does not contain a response from the respondent (claimant).

DECISION

Affirmed.

The carrier asserts that the hearing officer's decision is against the great weight and preponderance of the evidence and that the decision of the IRO carries presumptive weight. We have previously addressed the "presumptive weight" provision of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308(v) (Rule 133.308(v)), and determined that it "is an evidentiary rule which creates a rebuttable presumption, as distinguished from a conclusive presumption, that the IRO decision is the correct decision which should be adopted by the hearing officer and the Appeals Panel unless rebutted by contrary evidence." Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. In the instant case, the hearing officer commented that "[a]fter a thorough review of all the evidence, including [(Dr. S)] testimony regarding the myelogram [sic] films which the IRO did not evaluate, I have concluded that the IRO's Decision recommending against spinal surgery is not supported by a preponderance of the evidence." Nothing in our review of the record indicates that the hearing officer's decision requires reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCUR IN RESULT:

Chris Cowan
Appeals Judge